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No. 97-930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

VICTORIA BUCKLEY, Colorado Secretary of State,
Petitioner,

v.

AMERICAN CONSTITUTIONAL LAW FOUNDATION, INC., *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, U.S. CONFERENCE OF MAYORS, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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Pursuant to Rule 37.3 of the Rules of this Court, *amici* respectfully move for leave to file the attached brief *amicus curiae* in support of petitioner. Petitioner has consented to the filing of this brief. This motion is made necessary by the refusal of respondents to consent to the filing.

Amici are organizations whose members include state, county and municipal governments and officials throughout the United States. *Amici* have a compelling interest in the legal issue presented in this case: whether the First Amendment prohibits States and local governments from enacting reasonable and necessary regulations of the petition process.

"[T]wenty-four States and the District of Columbia have adopted procedures for statewide initiatives." David Kehler & Robert Stern, "Initiatives in the 1980s and 1990s" in Council of State Governments, *The Book of the States: 1994-95 Edition* 279 (1994). Numerous local governments have done likewise. *See* David S. Broder, "The Ballot Battle: Collecting Signatures for a Price," *The Washington Post*, April 12, 1998, at A1. Advocated by the Progressives in the early 1900s in order to lessen the influence on government of moneyed special interests, initiative campaigns have recently "become very costly, undermining one of the key goals of Progressive reformers." *Book of the States* at 281.

The initiative process has become dominated by wealthy special interests which can afford to purchase the services of the firms that comprise the "initiative industry." *Id.* at 285. These firms are "seen by critics of direct democracy as hired guns who manipulate public opinion and shop potential initiative questions to prospective sponsors as a means of obtaining business." *Id.* Indeed, "[s]ome signature-gathering firms practically guarantee that, for a fee, they can qualify virtually any measure for almost any state's ballot." *Id. See also* Robert M. Stern, "Salvaging the Initiative Process," in *State Government News* (September 1992), at 24-25 (discussing the pressing need for reform of the initiative and referendum process).

The Colorado regulations that are the subject of this case are limited, reasonable and necessary regulations of that State's petition process. The court of appeals erred both in subjecting them to strict scrutiny and in striking them down. Unless reversed, the analysis and holding of the court of appeals will constitute a serious obstacle to essential state and local government regulation of the petition process.

Because of the importance of this issue to *amici* and their members, *amici* respectfully move for leave to file the attached brief *amicus curiae* in support of petitioner.

Respectfully submitted,

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April 30, 1998

QUESTION PRESENTED

Whether the State of Colorado may constitutionally regulate the process of circulating initiative petitions by requiring that: (1) petition circulators must be registered electors; (2) petition circulators must wear identification badges; and (3) proponents of an initiative who employ professional circulators must file reports disclosing the identity of and amounts paid to circulators.

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INTEREST OF THE *AMICI CURIAE*

The interest of the *amici* is set forth in the motion accompanying this brief.[1]

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[1] Pursuant to Rule 37.6, *amici* state that no counsel for a party has authored this brief in whole or in part, and that no person or entity, other than the *amici*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

STATEMENT

1. The Initiative, A Progressive Era Good Government Reform, Has Become Dominated By The "Initiative Industry"

The initiative and referendum were a central part of the reform agenda of the Progressive movement and thus are most commonly found in the western States, where the Progressives left their greatest mark. David B. Magleby, "Let the Voters Decide? An Assessment of the Initiative and Referendum Process," 66 U. Colo. L. Rev. 13, 14-15 (1995). Only six States west of the Mississippi River do not have some form of the initiative or popular referendum, while only eight States east of the Mississippi have some form of the initiative or referendum. *Id.*

The Progressives saw the initiative as central to political reform because it provided a means of limiting the control of wealthy special interests, which were perceived as controlling many state and local governments at the turn of the century. Leading Progressives like Gov. Robert M. LaFollette of Wisconsin aimed at "restoring former standards of civic virtue, and attempting to consolidate the rule of honest men by new political devices: the popular primary, initiative and referendum." II S. E. Morison, *Oxford History of the United States* 429 (1927).

The core tenets of the Progressives were, in the words of one of their chroniclers, " 'that special, minority, and corrupt influence in government—national, state, and city—be removed' " and " 'that the structure or machinery of government, which has hitherto been admirably adapted to control by the few, be so changed and modified that it will be more difficult for the few, and easier for the many, to control.' " Magleby, 66 U. Colo. L. Rev. at 15-16 (quoting Benjamin P. DeWitt, *The Progressive Movement* 4-5 (1915)). The initiative and referendum, processes of "direct democracy" designed to remove power from the hands of special interests and place it back in the hands of the people, were thus integral to the Progressives' agenda.

Like many another well-intentioned reform, the initiative and referendum has over time, and particularly in the past 15 years, " 'slipped away from the citizens it was invented to serve into the hands of the very kind of wealthy special interests it was meant to contain.' " Daniel Hays Lowenstein & Robert M. Stern, *The First Amendment and Paid Initiative Circulators: A Dissenting View and a Proposal*, 17 Hastings Const. L.Q. 175, 176 (1989) (citation omitted). As one thoughtful and thorough study of the initiative process explains,

> It is somewhat ironic that the initiative process was an attempt to wrest control of [California's] political process away from special interests, especially the Southern Pacific Railroad, in the early 1900s. The irony became apparent in 1990 when Southern Pacific itself took advantage of the initiative process by contributing significant financing to the ballot qualification of Proposition 116, an initiative passed by the voters to provide for $2 billion in bond measure financing to support rapid rail transit. Southern Pacific, like many other special interest groups, now uses the initiative process as a way to achieve goals it cannot obtain through the legislature.

California Commission on Campaign Financing, *Democracy by Initiative: Shaping California's Fourth Branch of Government* 5 (1992).[2]

Today the initiative and referendum process is dominated by money and professional firms. Broder, "The

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[2] David Broder reports that in late March 1998, 32 Indian tribes negotiating with Gov. Pete Wilson of California over the scope of legal gambling in the State were unable to reach a satisfactory compromise. They then resorted to an extremely well-funded initiative and referendum campaign in which they authorized a firm called National Petition Management to pay the premium rate of $1.50 per signature for each of the 403,269 signatures they needed to get a favorable gambling initiative on the California ballot. David S. Broder, "The Ballot Battle: Collecting Signatures for a Price," *The Washington Post*, April 12, 1998, at A1.

Ballot Battle," *Washington Post*, April 12, 1998, at A6. "In recent years, the most important factor determining whether an initiative will qualify for the ballot is the amount of money spent on petition circulation." *Democracy by Initiative*, at 159. In 1996, $141,274,345 was spent on 27 initiatives in California alone. Broder, "The Ballot Battle," at A6. In California,

> Professional signature-gathering firms now boast that they can qualify *any* measure for the ballot (one 'guarantees' qualification) if paid enough money for cadres of individual signature gatherers, and their statement is probably true. Any individual, corporation, or organization with approximately $1 million to spend can now place any issue on the ballot and at least have a chance of enacting a state law.

Democracy by Initiative at 265. *See also Broder*, "The Ballot Battle," at A6 (in California $1-2 million is needed to get an initiative on the ballot; some of the money is used for lawyers and for polling, "[b]ut most . . . stays with the few thousand signature-gatherers and their bosses"). As the head of one of the leading solicitation firms bluntly puts it, "'Yeah, I think that if you have enough money, you can get on the ballot. Yeah, no question.'" Lowenstein & Stern, 17 Hastings Const. L.Q. at 175 (quoting Mike Arno, president of American Petition Consultants).[3]

The hundreds of millions of dollars poured in recent years into the increasing numbers of signature-gathering

[3] In 1996, a coalition of law firms from California, New York, Chicago, Washington and Philadelphia spent $15 million to qualify for the California ballot Proposition 211, "an initiative that would have made it easier for individuals, labor union pension funds, and other disappointed investors to sue corporations and their officers on charges of misrepresenting stock in initial public offerings." Peter Schrag, *Paradise Lost: California's Experience, America's Future* 198-99 (1998). But they were outspent by industries that depend on such offerings, who raised $37 million, which was more than enough to defeat Proposition 211 at the polls. *Id.*

campaigns[4] are not all intended to see the proposed measures enacted into law. "Issue activists have learned that placing an initiative on the ballot, regardless of the outcome of the election, generates widespread media attention for their issue." Magleby, "Let the Voters Decide?," 66 U. Colo. L. Rev. at 28. In addition, "some initiatives dealing with the same issue on the same ballot are designed to confuse voters rather than to be approved. Some initiatives are put on the ballot to siphon money from conservative Republicans or liberal Democrats." Charles M. Price, "Signing for Fun and Profit: The Business of Gathering Petition Signatures," *California Journal*, Nov. 1992, 545, 548. And large sums of money are now routinely used to hire circulators solely to prevent them from collecting signatures for a rival interest group. *See Democracy by Initiative* at 146-47.[5]

[4] Whereas 67 initiatives qualified for the ballot in 1992, 76 qualified in 1994 and 106 qualified in 1996. Broder, "The Ballot Battle," at A6. In California, whereas 42 initiatives were passed between 1911 and 1978, 40 were passed between 1978 and 1996, with 22 qualifying for the ballot in the 1970s, 46 in the 1980s, and 49 thus far in the 1990s (through the 1996 election cycle). Schrag, *Paradise Lost: California's Experience, America's Future* at 194.

[5] Competition for paid petition circulators has sometimes reached cutthroat proportions. Only a handful of professional petition circulation firms serve the California market. Given the need to employ professional circulation services to meet the state's high signature threshold, a new strategy has evolved to influence the state's political agenda. The strategy is simple: pay petition circulators *not* to collect signatures for an initiative proposal.

This strategy was used unsuccessfully by the tobacco industry in its effort to prevent a tobacco tax initiative from qualifying for the 1988 general election ballot (Proposition 99). Opponents of the tobacco tax enlisted the professional services of [two leading firms] prior to the measure even qualifying for the ballot. At a cost of $112,139, plus an additional $38,250 in various professional expenses, [one firm] hired an army of solicitors to collect signatures of those opposed to a possible tobacco tax measure. The petitions had no

As the foregoing indicates, the key players in the initiative process in virtually every State are the professional signature soliciting firms, their crew chiefs, and the signature solicitors they hire on an as-needed basis. "As the initiative has grown in popularity, it has also become a lucrative business, with at least six major firms headquartered in [California] and Nevada operating across the country as far away as Massachusetts and Florida." Broder, "The Ballot Battle," at A6. It has recently been estimated that signature-gathering firms are "responsible for 'at least 90%' of the successful petitions" nationally. *See id.* (citation omitted). In California, for example, there has not been "a truly volunteer petition drive since 1982." *Democracy by Initiative* at 145. "The era of the volunteer-run initiative has not entirely ended, although its death knell can be heard in California." *Id.* at 144.[6]

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legal standing; they did not offer an initiative proposal and they were not designed to qualify an issue to the ballot. . . .

What was accomplished by collecting signatures in opposition to the proposed tobacco tax was a depletion of signature gatherers available to help qualify the tax to the ballot.

Democracy by Initiative at 147. "Attempting to 'buy up' the signature-gathering labor pool in order to prevent a measure from reaching the ballot has been a strategy used in local elections as well." *Id.* at 148 (giving example of environmental initiative opposed by oil industry).

[6] The domination of the field by a few professional firms has grown steadily in the past 20 years.

Between 1982 and 1992 nearly 75 per cent (48 of 65) of all initiatives on the California ballot have qualified through the efforts of one or the other of [two leading firms]. Once hired, they virtually guarantee their clients' ballot status (each has a nearly 100 per cent success rate). Both firms also earn considerable sums qualifying initiatives in states like Oregon, Nevada, Washington, Michigan, Ohio, Oklahoma, and Colorado.

Price, "Signing for Fun and Profit," *California Journal*, Nov. 1992, at 546.

The operation of the "initiative industry" is simple. Top management contracts with the client to run a campaign to get a given initiative on the ballot. Working through a network of veteran crew chiefs, cadres of solicitors are hired by "contacting people from previous campaigns and by advertising for new ones in the classifieds." Price, "Signing for Fun and Profit," *California Journal*, Nov. 1992, at 547. Both crew chiefs and solicitors are paid an agreed amount for each signature obtained. *Id.* "Some folks are lured across state lines to do this work, despite requirements in many jurisdictions that signature gatherers be registered voters or permanent residents of that community. 'California has a residency requirement,' [one firm owner] says, but it's violated all the time.'" Broder, "The Ballot Battle," at A6. *See also* Schrag, *Paradise Lost: California's Experience, America's Future* at 209.

The rate of pay per signature is determined by the market, with unpopular initiatives or initiatives launched on short notice paying premium rates per signature to ensure that the requisite numbers can be gathered in the time allowed. *See* Broder, "The Ballot Battle," at A1. Solicitors not only haggle over the rate per signature, *see* Price, "Signing for Fun and Profit," *California Journal*, Nov. 1992, at 547, but they can distort the market by withholding signatures, thereby increasing their value. As the head of one firm explains,

> If you're slow in getting signatures, you've got to raise the price for the solicitors. It's a stock market out there. Some circulators will delay turning in their signatures on one of the petitions they're carrying, assuming the price will go up. It never goes down. We raise the price (per signature), and suddenly thousands of signatures come in. They bought low and sold high.

Id. In the early 1990s it was common for solicitors to earn $30 to $40 per hour for soliciting signatures on a piece work basis; several earned $50,000 to $60,000 in a five month period. *Id.* In Florida, for example, when gambling interests were paying $2.50 per name, some so-

licitors earned $750 per day. Broder, "The Ballot Battle," at A6.

The two principal methods for soliciting signatures are the "table method" and the "clipboard method." *Democracy by Initiative* at 137-39. Under the table method, two volunteers staff a table "in a public place with a steady stream of slow-moving pedestrian traffic' such as a shopping mall, race track, or fair. *Id.* at 137-38. Under the clipboard method, single solicitors walk up and down lines of people waiting to be admitted to an event such as a concert or a movie. *Id.* at 139.

Given the economics of the industry, it is standard practice for professional solicitors to solicit signatures for several petitions at one time.

> To make money in petitioning these days, [firms] must have packages of three or four or five initiatives —not merely a single initiative—to entice the best petition subcontractors to work for them. . . . The subcontractors want packages of initiatives because the more petitions, the more money and the better the enticement for successful solicitors.

Price, "Signing for Fun and Profit," *California Journal*, Nov. 1992 at 547.

One reported instance involved a solicitor simultaneously soliciting signatures for 13 petitions from an ironing board. "People would walk along the board, and he'd say, 'Are you for this one? . . . Sign here. This one? Sign here. This one?' " *Id.* Carrying numerous clipboards is also common and in one reported instance a solicitor using the clipboard method carried 11 clipboards at one time. *Democracy by Initiative* at 139. Naturally, professional solicitors seeking signatures for numerous petitions that offer different rates of pay "first ask people to sign the one paying the most." Broder, "The Ballot Battle," at A1 (solicitors carrying nine petitions encouraged potential signers to sign a gambling initiative paying the premium rate of $1.50 per signature).

The economics of the signature solicitation process strongly discourages discussion of the merits of the underlying proposal, even assuming that paid petition circulators carrying numerous petitions are equipped to engage in any such discussion. Two general principles guide solicitors. One is that "they can use their experience and training to attempt to create a situation in which the social pressure to sign is relatively high." Lowenstein & Stern, 17 Hastings Const. L.Q. at 199. Second, "they can adapt to the need for large numbers of signatures by ignoring potential signers for whom persuasion requires more than a few seconds." *Id.* "[M]ost circulators, especially those most likely to be successful, discipline themselves to avoid significant discussion and concentrate on numbers." *Id.* According to one recent account, "[f]ew of those at the tables will understand, much less explain, the details of the measures they're working for. . . . The emphasis is on quantity, not civic virtue. . . ." Schrag, *Paradise Lost: California's Experience, America's Future* at 209.

Even when undertaken by volunteer signature solicitors, signature solicitation is often more akin to hucksterism than political discourse.[7] "Both paid and volunteer circulators recognize the salesmanship nature of collecting signatures. . . . Circulators cannot afford the luxury of discussing meaningful aspects of the initiative proposal [with] potential signatories." *Democracy by Initiative* at 148.

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[7] Although volunteer solicitors are as unlikely to discuss the merits of petitions with potential signers as are paid solicitors, volunteer solicitors do attain consistently higher percentages of valid signatures than do paid solicitors. *Democracy by Initiative* at 149-51; Lowenstein & Stern, 17 Hastings Const. L.Q. at 188 & n.70. This is explained principally by the fact that

> [p]aid circulators generally are not concerned about the cause of the initiative proposal nor whether the proposal actually qualifies to the ballot. Their primary interest is personally to acquire as many signatures as possible in order to maximize financial gain. This encourages some recklessness in pressing people to sign petitions.

Democracy by Initiative at 149.

According to Ed Koupal, the dean of volunteer solicitors in California during their heyday in the 1970s,

> "We use the hoopla process. First, you set up a table with six petitions taped to it and a sign in front that says, SIGN HERE. One person sits at the table. Another person stands in front. That's all you need—two people.
>
> "While one person sits at the table, the other walks up to people and asks two questions. (We operate on the old selling maxim that two yesses make a sale.) First, we ask if they are a registered voter. If they say yes, we ask them if they are registered in that county. If they say yes to that, we immediately push them up to the table where the person sitting points to a petition and says, 'Sign this.' By this time the person feels, 'Oh goodie, I get to play," and signs it. If a table doesn't get 80 signatures an hour using this method, it's moved the next day.
>
> Koupal said that about 75 percent of the people sign when they're told to. "Hell, no, people don't ask to read the petition and we certainly don't offer," he added. "Why try to educate the world when you're trying to get signatures?"

Daniel Hays Lowenstein, *Election Law* 577 (1995) (quoting Carla Lazzareschi Duscha, *The Koupals' Petition Factory*, 6 California Journal 83, 83 (1975)). As Ed Koupal's wife, Joyce Koupal, puts it, "[T]he signature table is not a library." *Democracy by Initiative* at 148. *See also* David B. Magleby, "Ballot Access for Initiatives and Popular Referendums: The Importance of Petition Circulation and Signature Validation Procedures," 2 J. L. & Pol. 287, 300 (1985) (describing short-cuts taken by California Common Cause to collect signatures).

Despite the extraordinary degree to which the initiative and referendum process has changed in recent decades, essential regulation and reform are not easily undertaken. By virtue of its age the initiative has assumed "a semi-sacrosanct status." *Democracy by Initiative* at 29. Even opponents of the initiative process "resist suggesting re-

forms for fear they will be branded as 'enemies of the people.' " *Id. See also* Broder, "The Ballot Battle," at A6 ("Critics say [the initiative] has become a tool of special interests, but few legislatures have dared to interfere with this exercise of popular sovereignty."). Nor is it always apparent which regulatory mechanisms will best accomplish the needed reforms. *See Democracy by Initiative* at 20-30 (recommending many possible reforms of the petition process in California, including disclosure of sponsorship and expenditure reports).[8] But it is clear that States and local governments must be permitted to engage in reasonable and good faith efforts to regulate the petition process if its democratic essence is to be restored.

2. Colorado's Regulation Of The Petition Process

In 1910, at the height of the Progressive era, the people of Colorado adopted the initiative and referendum through an amendment to the state constitution. Pet. App. B-10. That amendment provides that "the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact and reject the same at the polls independent of the General Assembly." Colo. Const. art. V, § 1 (*quoted in* Pet. App. B-10). Under this enactment, petitions were to be signed by "qualified electors who must provide their residence addresses and the dates of signing" as well as "the attachment of an affidavit of some qualified elector verifying the signatures." Pet. App. B-11.

In 1913, the Colorado General Assembly enacted a number of further regulations of the process. These included that signers must indicate the street and number of their residences, that each petition carry a warning that it is a felony to sign with any name other than one's own, "or to knowingly sign more than one petition, or to sign when not a qualified elector." *Id.* In 1980 the Colorado

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[8] Since *Meyer v. Grant*, 486 U.S. 414 (1988), some States have banned the payment of solicitors on a per signature basis while allowing solicitors to be compensated on other bases. *See* Me. Rev. Stat. tit. 21-A, § 904-A; N.D. Cent. Code § 16.1-01-12.11.

Constitution was amended to limit those persons permitted to sign and circulate petitions to "registered voters." *Id.* at B-13. The requisites to registering to vote in Colorado are that the person be at least 18 years of age, a citizen of the United States, and a resident of Colorado for at least 30 days. Colo. Rev. Stat. § 1-2-101.

After this Court invalidated Colorado's prohibition of the use of paid solicitors, *see Meyer v. Grant*, 486 U.S. 414 (1988), the State "experienced a surge in the use of paid petition circulators and in the number of complaints of abuses committed by circulators." Pet. 4. The General Assembly accordingly enacted two further regulations of the process. One was to require circulators to wear identification badges containing the circulator's name, whether he or she is paid or a volunteer, and, if paid, the name and telephone number of the person or entity for whom the circulator is working. *Id.* (citing Colo. Rev. Stat. § 1-40-112(2)).

The second requires the filing of two kinds of reports by initiative proponents who employ paid circulators. Such proponents must file with the Secretary of State monthly reports containing their names, the name and residential and business address of each paid circulator, the name of the proposed ballot measure, and the amount of money paid and owed to each paid circulator for petition circulation during the month in question. Colo. Rev. Stat. § 1-40-121(2). Then, if the initiative is ultimately filed, the proponents must file with the Secretary a report containing "the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total amount paid to each circulator." *Id.* § 1-40-121(1).

SUMMARY OF ARGUMENT

The court of appeals applied strict scrutiny to invalidate three critical components of Colorado's regulation of the petition process. In so doing the court gave insufficient weight to this Court's cases upholding reasonable regulation of electoral processes. It also overlooked the fact that the initiative and referendum are an integral part of the State's legislative process and, as such, are a proper subject of reasonable regulation.

The challenged regulations impose only a small burden on proponents of initiatives while substantially advancing the State's compelling interest in maintaining the integrity of the initiative and referendum process and fostering disclosure of information that is critical to persons solicited to sign petitions. These regulations are the State's reasonable and necessary response to the "surge in the use of paid petition circulators and in the number of abuses committed by circulators" since *Meyer v. Grant*. Pet. 4. The judgment of the court of appeals should accordingly be reversed.

A. Although the Court has on occasion invalidated state laws that severely burden political speech, *see, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), it has repeatedly upheld reasonable state regulation of electoral processes. In *Burdick v. Takushi*, 504 U.S. 428 (1992), the Court sustained Hawaii's total ban on write-in voting in the face of a First and Fourteenth Amendment challenge. While acknowledging that " 'voting is of the most fundamental significance under our constitutional structure,' " *id.* at 433 (citation omitted), the Court reasoned that it would be inappropriate "to subject every voting regulation to strict scrutiny." *Id.* Instead, "the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens [constitutional] rights." *Id.* at 434. When the law imposes " 'severe' restrictions" it will be subjected to strict scrutiny. *Id.* (citation omitted). When, however, "a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id. See also Timmons v. Twin Cities Area New Party*, 117 S.Ct. 1364 (1997).

Another key precedent in this area is *Buckley v. Valeo*, 424 U.S. 1 (1976). There the Court upheld provisions of federal law that required the reporting of expenditures made for communications advocating the election or defeat of candidates for federal office. Although recognizing that "public disclosure of contributions [will] deter some individuals who otherwise might contribute" and "may even expose contributors to harassment or retaliation," *id.* at 68, the Court upheld the reporting requirements. The possible burdens on speech were outweighed by the governmental interests advanced by disclosure and reporting, which included "deter[ring] actual corruption and avoid-[ing] the appearance of corruption," and providing "an essential means of gathering data necessary to detect violations" of the law. *Id.* at 67-68.

B. When analyzed in light of these precedents, each of Colorado's regulations is reasonable and necessary to enable the State to enforce laws that ensure the integrity of the petition process, pursuant to the analysis of *Meyer v. Grant*, 486 U.S. 414, 425-28 (1988) (invalidating Colorado's prohibition of paid signature solicitors because other state laws are sufficient to ensure the integrity of the petition process). Nor do any of the challenged laws unduly burden speech. The judgment of the court of appeals should therefore be reversed.

1. The requirement that petition circulators be registered voters does not burden speech. It is a reasonable regulation designed to ensure that circulators are of age and are residents of the State. These requirements are necessary given the administrative responsibilities imposed on circulators and their role in proposing legislation and constitutional amendments. Moreover, as a practical matter it is easy to register to vote in Colorado, and solicitors are not required to vote, but merely to register.

2. The requirement that proponents of initiatives who employ professional signature solicitors file reports with the Secretary of State is likewise constitutional. These reports

do not burden speech, are essential to enable the State to enforce its laws regulating the petition process, and require the filing of less detailed information than the reporting and disclosure requirements upheld in *Buckley v. Valeo*.

3. The State's requirement that signature solicitors wear identification badges is reasonable, nondiscriminatory, and necessary both to assist the State in policing the solicitation process and in providing persons solicited with essential information they need to evaluate the petition they are being urged to endorse. Given the proliferation of the use of paid solicitors in Colorado as elsewhere, it is reasonable to require that a person being solicited to sign one or more petitions also be provided with enough information to determine whether the person urging him to sign is being paid for each signature obtained.

This Court has repeatedly indicated that States may require persons soliciting money to identify themselves to persons solicited in order to reduce the possibility of fraudulent solicitation. *See, e.g., Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940). Colorado may likewise protect its citizens who are being importuned, solely for monetary gain, to place their names and addresses on initiative petitions. The requirement that the solicitor's name be on the badge is constitutional given the administrative function performed by the solicitor, which alone distinguishes this case from *McIntyre*. In addition, the name requirement discourages improper practices by solicitors and aids in enforcement should such practices occur.

ARGUMENT

COLORADO'S REGULATION OF THE PETITION PROCESS DOES NOT VIOLATE THE FIRST AMENDMENT

A. This Court Has Repeatedly Upheld Reasonable State Regulation Of Electoral Processes

The Court's evaluation of state laws that regulate electoral processes converges at the intersection of two categories of fundamental values. The first involves laws which determine the processes of self-government. These include, in addition to regulations which affect public referenda and ballot access, laws on voter qualifications, voting districts, and government structure.[9] The second category concerns the rights of expression and association guaranteed by the First Amendment.

This intersecting of values requires courts to adjudicate controversies, like that found in this case, for which divergent precedents are potentially relevant. These conditions heighten the risk that "differing assessments of the force of competing analogies," *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 197 n.7 (1995), will produce erroneous results. Because constitutional challenges to specific provisions of a State's electoral laws cannot be resolved by a litmus test that will separate valid from invalid restrictions, *Storer v. Brown*, 415 U.S. 724, 730 (1974), arguments by analogy permeate the courts' decisions. In this case, the court of appeals' parsing of the competing analogies went awry.

1. Central to the line of cases upholding reasonable state regulation of electoral processes is *Burdick v. Takushi*, 504 U.S. 428 (1992). In *Burdick*, a registered Hawaii voter argued that the State's prohibition of write-in voting violated his rights of expression and association under the First and Fourteenth Amendments. This Court

[9] *See, e.g., Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969).

disagreed. Although the rights in question were " 'of the most fundamental significance under our constitutional structure,' " it did "not follow that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute." *Id.* at 433 (citing *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)).

By their nature, said the Court, state laws governing electoral processes will "invariably impose some burden" on individuals. *Id.* Whether a state code provision governs "registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, [it will] *inevitably affect*[]—at least to some degree—the individual's right to vote and his right to associate with others for political ends.' " *Id.* (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)) (emphasis added). Accordingly, the fact that a state regulatory regime " 'creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not itself compel close scrutiny.' " *Id.* (quoting *Bullock v. Carter*, 405 U.S. 134, 143 (1972)).

Because no fixed test can determine the outcome, "a more flexible standard" applies. *Id.* at 434 (citing *Anderson*, 460 U.S. at 788-89). A court adjudicating

> a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments" . . . against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Id. (quoting *Anderson*, 460 U.S. at 789). Under this standard, the "rigorousness" of a court's review "depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Id.* When those rights are "subjected to 'severe' restrictions, the regulation

must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). When, however, a state law "imposes only 'reasonable, nondiscriminatory restrictions'" on First and Fourteenth Amendment rights, "'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson*, 460 U.S. at 788).

Most recently, the Court upheld Minnesota's electoral regulations which prohibit an individual from appearing on the ballot as the candidate of more than one political party. *Timmons v. Twin Cities Area New Party*, 117 S.Ct. 1364 (1997). The Court emphasized that "States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." 117 S.Ct. at 1369. Applying *Burdick's* "flexible standard," *see id.* at 1370, the *Timmons* Court reiterated that "[n]o bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms." *Id.*

Another key precedent in this area is *Buckley v. Valeo*, 424 U.S. 1 (1976), in which the Court upheld provisions of the Federal Election Campaign Act that required reporting to the Federal Election Commission of expenditures made for communications advocating the election or defeat of a candidate for federal office. *Id.* at 81-82.[10] The Court rejected the argument that, by analogy to the separation of church and state and the governmental neutrality regarding religion mandated by the First Amendment, there is a similar obligation to be wholly neutral

[10] The provisions at issue required not merely disclosure of an expenditure and its use, but also: "[T]he identification of each person to whom expenditures have been made . . . within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made." 2 U.S.C. § 434(b)(9) (1970 ed. Supp. IV), reproduced in Appendix to *Buckley*, 424 U.S. at 158.

regarding political speech. It reasoned that the challenged provision was "a congressional effort, not to abridge . . . speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people. Thus, [the provision] furthers, not abridges, pertinent First Amendment values." *Id.* at 92-93 (footnotes omitted).

The government interests vindicated by the disclosure requirements at issue in *Buckley*—which included "deter[ring] actual corruption and avoid[ing] the appearance of corruption" and providing "an essential means of gathering data necessary to detect violations of the contribution limitations," *id.* at 66-68—were of a magnitude "sufficiently important to outweigh the possibility of infringement, particularly when 'the free functioning of our national institutions' is involved." *Id.* at 66 (citation omitted). Although the Court acknowledged that "public disclosure of contributions . . . will deter some individuals who otherwise might contribute," or "may even expose contributors to harassment or retaliation," it held that this provision of the statute legitimately advanced important government interests. *Id.* at 68.

2. In *Meyer v. Grant*, 486 U.S. 414 (1988), the Court ruled that a Colorado statute prohibiting the use of paid circulators to obtain signatures of qualified voters on initiative petitions violated the First and Fourteenth Amendments. The Court framed the issue as "involv[ing] a limitation on political expression subject to exacting scrutiny." *Id.* at 420.

In contrast to the *Burdick* line of cases, the Court in *Meyer* found the State's interest in protecting the integrity of the electoral process against fraud to be insufficient. The State's interest "does not justify the prohibition" because "[n]o evidence has been offered to support th[e] speculation" that compensating petition circulators might taint the process (for example, by tempting the circulator to disregard his duty to verify the authenticity of signa-

tures). *Id.* at 426. The Court was "not prepared to assume that a professional circulator—whose qualifications for similar future assignments may well depend on a reputation for competence and integrity—is any more likely to accept false signatures than a volunteer who is motivated entirely by an interest in having the proposition placed on the ballot." *Id.*

In *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), the Court struck down an Ohio regulation prohibiting the distribution of campaign literature that did not contain the name and address of the person issuing the literature. The Court based its holding on the proposition that the Ohio statute was not simply an election code provision subject to the balancing test set forth in *Burdick*, *Anderson*, and similar cases, but rather "a regulation of pure speech." 514 U.S. at 345. Critical was the fact that "the category of covered documents is *defined by their content*—only those publications containing speech designed to influence the voters in an election need bear the required markings." *Id.* (emphasis added). In other words, because the publication was itself "speech designed to influence the voters," the disclosure requirement, by precluding anonymity, could have a chilling effect. *Id.*[11]

3. Two key principles emerge from these cases. First, a comparison of the relative burdens imposed and the interests served by the state regulation under challenge must be undertaken in each case. Free expression will not invariably be deemed an absolute value, even where "core political speech" exists. *See Timmons*, 117 S.Ct. at 1370; *Buckley*, 424 U.S. at 66. If a state law imposes reasonable, nondiscriminatory restrictions on electoral processes

[11] In marked contrast to the speech at issue in *McIntyre*, one of the principal pitches used by solicitors to induce people to sign petitions is to tell them that signing " 'doesn't mean you agree. It's just to get the measure on the ballot so the people will have a chance to vote on it.' " Price, "Signing for Fun and Profit," *California Journal*, Nov. 1992, at 547. *See also* Lowenstein & Stern, 17 Hastings Const. L.Q. at 198.

and does not unduly burden speech, the regulatory interests of the State are ordinarily sufficient to sustain the law. *See Timmons*, 117 S.Ct. at 1370; *Burdick*, 504 U.S. at 434.

The cases establish another essential principle. When a State's electoral regulations are challenged as burdening political expression, the nature and extent of the burden—because it is the linchpin of the Court's decision—cannot be speculative. *See Buckley*, 424 U.S. at 70 (a showing of "significant" damage to a protected interest is required). For example, in *Meyer* the Court relied on the causal link between the ability to compensate petition circulators and the extent to which, in a quantitative sense, the proponent's message would be conveyed throughout the State. The existence of that causal relationship was not speculative but rather was so obvious that it was a matter as to which a court could " 'take judicial notice.' " 486 U.S. at 423 (quoting *Urevich v. Woodard*, 667 P.2d 760, 763 (Colo. 1983)).

Observance of this rule is especially important when evaluating laws that regulate electoral processes because such laws "invariably impose some burden" on individuals. *Burdick*, 504 U.S. at 433. Because "some burden" is inevitable, the danger of a court's too readily assuming the existence of a "severe restriction" whenever it perceives *any* restriction is always present. *Id.* Unless a court insists upon substantial evidence of a significant burden on political expression, there is simply too great a likelihood that the court will compromise a State's fundamental interest in maintaining the integrity of its electoral processes.

B. Colorado's Regulation of the Petition Process Is Valid

While the court of appeals nominally invoked both lines of cases discussed above, the court erred in its interpretation and application of these precedents. Each of Colorado's regulations is valid and necessary to enable the State to enforce laws that are essential to preserve the in-

tegrity of the petition process, pursuant to the analysis of *Meyer*. *See* 486 U.S. at 425-28 (invalidating Colorado's prohibition of the use of paid petition solicitors because other state laws are sufficient to ensure the integrity of the petition process).

1. *The Requirement That Petition Circulators Be Registered Voters*

Colo. Rev. Stat. § 1-40-112(1) prohibits the circulation of a petition for any initiative or referendum measure "by any person who is not a registered elector and at least eighteen years of age at the time the [petition] is circulated." This requirement is reasonable and necessary to enable the State to enforce other laws that ensure the integrity of the petition process. Moreover, registering to vote in Colorado is an extremely easy process that does not burden speech. Accordingly, Colorado's voter registration requirement is constitutional.

Colorado law establishes three requirements for voter registration—that a person be: 1) 18 years of age, 2) a U.S. citizen, and 3) a resident of the State for at least 30 days. Colo. Rev. Stat. § 1-2-101. Registering to vote in Colorado is an exceedingly easy procedure; it can be done at the county clerk's office, by postcard, and at driver's license examination facilities. *See id.* §§ 1-2-202, 208, and 213.

In view of the central role of solicitors in ensuring the integrity of the petition process, it would be irresponsible for the State to permit persons under the age of 18 to circulate petitions.[12] Solicitors are required by state law to attest "that each signature . . . is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant [solicitor], each of the persons signing said petition was, at the time of signing, a registered elector." Colo. Const. art. V, § 1.

[12] Indeed, the court of appeals upheld the minimum age requirement for solicitors. Pet. App. A-30-A-31.

As the Court emphasized in *Meyer*, "it is a crime to forge a signature on a petition, to make false or misleading statements relating to a petition, or to pay someone to sign a petition." 486 U.S. at 427 (citations omitted). Given the central role of solicitors in the State's legislative process, and their potential criminal liability, the requirements that they be 18 years of age and residents of the State for at least 30 days are essential to ensure that petition circulators will be of an age and maturity sufficient to execute their responsibilities under the law. In the event they fail to do so, requiring that they be state residents both ensures that they are within the subpoena power of the Secretary of State, *see generally* Colo. Rev. Stat. § 1-40-132(1), and greatly increases the likelihood that the State will be able to take criminal enforcement action if necessary.

The court of appeals took the position that the registered voter requirement has a "discriminatory effect" in that it "bars persons who are not registered voters from circulating petitions, thereby excluding that group of persons from participating in core political speech." Pet. App. A-29. The court reasoned that the "exclusion of unregistered circulators" has two impermissible effects: It "limits the number of voices to convey the proponent's message," and it "limit[s] the audience the proponents can reach . . . making it less likely they will be able to gather the required number of signatures to place a measure on the ballot." *Id.* The court's reasoning is unpersuasive.

First, while those persons who are not registered to vote are precluded from soliciting signatures, there is no evidence in the record to support the contention that the registration requirement is a significant burden on speech. Not only is it very easy to register to vote in Colorado, but there is no requirement that a solicitor vote, only that he register. Moreover, to the extent that there are in fact persons who wish to solicit signatures to place proposed

laws on the ballot so that other Coloradans can vote for them—but who themselves refuse to register to vote—the State should not be required to erect an entirely separate mechanism for registering to solicit signatures when the procedures to register to vote are already in place and extremely accessible.[13]

The court of appeals based its invalidation of the registration requirement on *Meyer*; however, the court's analogy to *Meyer* fails. The *Meyer* Court's conclusion—that there is a very close relationship between the payment of petition circulators and the extent to which the proponents' message will be conveyed to the public—is unassailable. The burgeoning initiative industry is ample proof that paying solicitors greatly increases the number of persons eager to do this work. Indeed, so obvious was this causal link that it was a matter as to which a court could "take judicial notice." 486 U.S. at 424 (quoting *Urevich v. Woodard*, 667 P.2d at 763). In this case, by contrast, it simply does not follow with reasonable probability that prohibiting persons not registered to vote from circulating petitions will materially affect the reach of the initiative proponent's message. Nor is there any evidence in the record to support the court of appeals' conclusion to that effect.

2. *Filing Of Reports By Initiative Proponents Who Employ Professional Solicitors*

Colorado requires proponents of initiatives who employ professional signature solicitors to file two kinds of reports with the Secretary of State. First, proponents must file monthly reports containing their names, the name and residential and business address of each paid circulator,

[13] Arguably, if the interests of persons who wish to solicit signatures to place initiatives on the ballot but who themselves refuse to register to vote are deemed sufficiently weighty, the State could implement a parallel registration procedure for registering to solicit signatures but not to vote. This would, however, have the potential to be far more burdensome for potential registrants than the simple procedures for voter registration.

and the amount earned by each circulator during the month in question. Colo. Rev. Stat. § 1-40-121(2). Second, at the conclusion of the campaign and at the time the petition is filed, proponents must file with the Secretary a final report containing "the name, address, and county of voter registration of all circulators who were paid to circulate any section of the petition, the amount paid per signature, and the total amount paid to each circulator." Colo. Rev. Stat. § 1-40-121(1).

In *Buckley v. Valeo*, this Court upheld the record-keeping and reporting requirements contained in the Federal Election Campaign Act of 1971. These included keeping "detailed records," subject to audit and field investigation by the FEC, of the name and address of every person making a contribution in excess of ten dollars, along with the date and the amount of the contribution. 424 U.S. at 63. In addition, each committee and candidate was required to file monthly reports with the FEC, containing "detailed financial information, including the full name, mailing address, occupation, and principal place of business of each person who has contributed over $100 in a calendar year, as well as the amount and date of the contributions." *Id.*

Applying strict scrutiny, the Court upheld these federal law requirements, reasoning that while such "compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. . . . there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the "free functioning of our national institutions' is involved." *Id.* at 66 (quoting *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1, 97 (1961)). The Court readily concluded that the disclosure requirements at issue met this standard, reasoning in part as follows:

> [D]isclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid

> voters in evaluating those who seek federal office. . . . The sources of a candidate's financial support . . . alert the voter to the interests to which a candidate is most likely to be responsive. . . .
>
> [In addition,] and not least significant, record-keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the [underlying laws].

Id. at 66-68 (citations omitted). The Court explained that "'informed public opinion is the most potent of all restraints upon misgovernment.'" *Id.* at 67 n.79 (quoting *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936)).

Although *amici* respectfully submit that more recent precedents suggest that strict scrutiny may no longer be required in the area of election-related reporting and disclosure, *see Timmons*, 117 S.Ct. at 1370; *Burdick*, 504 U.S. at 433-34, the purposes served by Colorado's reporting requirements are identical to those relied on by the Court to uphold the more detailed record-keeping and disclosure requirements in *Buckley*. In essence, these are to provide the public with a reliable source of information about who, in fact, is employing highly compensated professional solicitors to get an initiative on the ballot, and to give the State a means to enforce compliance with other laws that regulate the solicitation of signatures by professionals. *Buckley* thus squarely supports reversal of the court of appeals' invalidation of the State's reporting requirements. *Cf. Lewis Publishing Co. v. Morgan*, 229 U.S. 288 (1913) (newspapers desiring privilege of second class postage could be required to provide Postmaster General, and to publish, names and addresses of editors, publishers, business managers, and owners).

Reversal of this ruling is also supported by the fact that Colorado's reporting requirements do not burden or limit speech. Because the reporting requirements do not burden expression, they are valid because they, like the federal

law requirements upheld in *Buckley*, further the State's compelling interests in preventing fraud and informing the electorate.

The Tenth Circuit invalidated the State's reporting requirements on the ground that "compelling the disclosure" of the identities of paid circulators in periodic reports filed with the Secretary of State "chills paid circulation." Pet. App. A-40. Acknowledging that "the fact that disclosure is made at the time the proponents file the petition lessens the burden of the disclosure," the court nonetheless concluded that "exacting scrutiny" applies and struck down the reporting requirements. *Id.* This holding is irreconcilable with *Buckley* and is unsupported by the record in this case.

3. *The Requirement That Petition Circulators Wear Identification Badges*

After this Court invalidated Colorado's prohibition of the use of paid signature solicitors in *Meyer*, Colorado, like other States, "experienced a surge in the use of paid petition circulators and in the number of complaints of abuses committed by circulators." Pet. 4. The state legislature accordingly enacted an identification badge requirement as well as the reporting requirements discussed above. Under Colo. Rev. Stat. § 1-40-112(2), solicitors must wear badges containing their names, whether they are paid or volunteer, and, if paid, the name and telephone number of the person or entity for whom they are working.

The badge requirements enacted by the State are reasonable, nondiscriminatory, and necessary both to assist the State in policing the solicitation process and in providing persons solicited to sign initiative petitions with essential information they need to evaluate the petition. Given the proliferation of the use of professional signature solicitors throughout the country and the tactics routinely used by the initiative industry, *see* discussion at 3-9 *supra*,

fundamental fairness requires that a person being solicited to sign one or more petitions be simultaneously provided with enough information to determine whether the person urging him to sign has a purely pecuniary interest in obtaining signatures for the petition and, if so, the ultimate source of the solicitor's compensation. As this Court noted in *Buckley*, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.' " 424 U.S. at 68 (quoting Louis Brandeis, *Other People's Money* 62 (1933)).

The requirement that the solicitor include her name on the badge is likewise permissible. First and foremost, it recognizes that—in contrast to the handbilling at issue in *McIntyre*—the solicitor is not simply soliciting signatures to support an initiative, but is also performing an essential administrative function in the legislative process by attesting to the validity of signatures collected and certifying that no unlawful means have been used to collect signatures. *See* Colo. Const. art. V, § 1. The name requirement both discourages improper practices and aids in enforcement should such practices be detected by citizens who have been solicited. In addition, it is not unreasonable for the State to require solicitors to disclose their names to persons being solicited when persons who sign petitions are required to disclose to the solicitor, in writing, not only their names but also their addresses.

This Court has repeatedly indicated that state laws may require that persons soliciting money identify themselves to persons solicited in order to reduce the possibility of fraudulent solicitation.

> Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Cantwell v. Connecticut, 310 U.S. 296, 306 (1940). *See also Riley v. National Federation of the Blind*, 487 U.S. 781, 799 n.11 (1988) ("the State may . . . require a fundraiser to disclose unambiguously his or her professional status" to person being solicited.). The State of Colorado may through similar identification requirements protect its citizens who are importuned to affix their names and addresses to initiative petitions by persons who may very well be paid on a per signature basis, but would not otherwise disclose that fact.

All that is established by the court of appeals' contrary analysis is that *some* forms of compelled disclosure impermissibly encroach on First Amendment rights. But that begs the question. It is true that several cases have held that in the circumstances presented the compelled disclosure of a person's identity would unconstitutionally deter the exercise of First Amendment associational rights. *See, e.g., Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). But those cases did not establish any general right to anonymity. Rather, they recognized a right to an exemption from otherwise valid disclosure requirements on the part of someone who could show a reasonable probability that the compelled disclosure would result in threats, harassment, or reprisals from either government officials or private parties. In *Buckley*, for example, the Court insisted on a record demonstrating " 'the kind of focused and insistent harassment of contributors and members that existed in the NAACP cases,' " and rejected "highly speculative" assertions of harm resulting from disclosure. *See* 424 U.S. at 70, 72 (citation omitted). Indeed, in *Buckley* the Court acknowledged that "public disclosure of contributions . . . will deter some individuals who otherwise might contribute," and "may even expose contributors to harassment or retaliation," but nevertheless ruled that the law legitimately advanced an important government interest. *Id.* at 68. Colorado's

badge requirement is likewise a reasonable, necessary, nondiscriminatory and constitutional regulation of the petition process.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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